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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 09/852,624 | 05/11/2001 | Roland De La Mettrie | 05725.0414-01 | 5645 |
| 22852 | 7590 | 10/21/2003 | EXAMINER | |
| FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 1300 I STREET, NW WASHINGTON, DC 20005 | | | ELHILO, EISA B | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 1751 | 19 |
| DATE MAILED: 10/21/2003 | | | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/852,624

Applicant(s)

METTRIE ET AL.

Examiner

Eisa B Elhilo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 June 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 30-53 is/are pending in the application.
- 4a) Of the above claim(s) 47-53 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 30-46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 18.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

1 This action is responsive to the response filed on June 18, 2003.

2 Claims 30-46 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Tomura et al. (US 6,027,719) in view of Lim et al. (US 6,045,590), for the reasons set forth in the previous office action in paper No. 16.

3 Claims 47-53 are withdrawn from consideration for the reasons set forth in the previous office action in paper No. 16.

Response to Applicant's Arguments

4 Applicant's arguments filed 6/18/2003 have been fully considered but they are not persuasive.

With respect to the rejection based upon Tomura (US' 719) in view of Lim (US' 590), Applicant argues that there is no motivation to combine the references and, there is no evidence of a reasonable expectation of success even if the references were combined.

The examiner respectfully disagrees with the above arguments because the primary reference of Tomura (US' 719) discloses the use of anionic surfactants as the genus in a hair dyeing composition (see col. 3, lines 42-44). Tomura also suggests that for practice, it is necessary to add surfactants and polymers in view of usability (see col. 1, lines 48-50). Lim (US' 590) in analogous art of hair dyeing compositions, teaches a composition comprising a different species of anionic surfactants and suggests that a combination of different surfactants can be used to impart particular viscosity and foaming- properties (see col. 9, lines 39-51), and, thus, a person of the ordinary skill in the art would be motivated to select any of the species of the genus taught by reference, including those of the claims, because an ordinary artisan would have the

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reasonable expectation that any of the species of the genus would have similar properties and thus, the same use as the genus as a whole. Also there is a reasonable expectation of success to add more than one surfactant or a combination of surfactants in the dyeing composition for viscosity purposes as taught by Lim. Therefore, the prima facie case of obviousness has been established.

5 **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

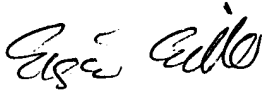
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B Elhilo whose telephone number is (703) 305-0217. The examiner can normally be reached on M - F (7:30-5:00) with alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (703) 308-0661. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

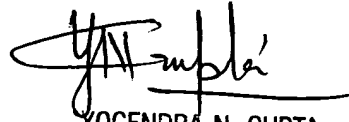
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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



Eisa Elhilo

October 7, 2003



YOGENDRA N. GUPTA
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700